

ANSWERS

TO THE

SEVERAL ALLEGATIONS

CONTAINED IN

THE PETITION

OF

CERTAIN LICENTIATES

PRACTISING PHYSIC IN LONDON,

TO

BOTH HOUSES OF PARLIAMENT.

LONDON:

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1834.

PETITION.

The Petition of certain Licentiates, practising physic
in London, to both Houses of Parliament.—

1. That the Charter of the Royal College of Physicians of London was granted by Henry the Eighth, for the advancement of medical science, and for the protection of the public against the temerity of wicked men and the practice of the ignorant.

2. That six Physicians were named in the Charter, who, together with all men of the same faculty then resident in London, were constituted one body, commonalty or perpetual College.

3. That the perpetuity of the College was to be kept up by the future admission of all men of the same faculty into the College.

ANSWER.

The several Allegations in this Petition may be answered in the following manner.—

1. This member of the petition involves a subtle inference which makes no part of the Charter. The Charter was granted for the purpose of preventing incompetent persons from practising physic. It expresses no other purpose whatever.

2. Lord Mansfield in *Rex v. Askew*. “I am far from thinking that all the men of and in London, then practising physic, were incorporated by the Charter. The immediate grantees under the Charter were the six persons particularly named in it. The rest were to be admitted by them. They were not ipso facto made members.”

3. Lord Mansfield in *Rex v. Askew*. “Much less are future practisers of physic of and in London actually incorporated by the Charter.”

And in *Stanger v. The President and College of Physicians*, the concurrent testimony of Lord Kenyon, and of all the judges on the bench, confirmed the judgment of Lord Mansfield.

4. That several of the six Physicians named in the Charter studied at and possessed degrees from foreign universities ; and that no distinction is mentioned as regards the university where a Physician may have obtained his degree.

5. That all Physicians entitled to practise in London, are equally entitled, under the Charter, to admission to the Fellowship of the College.

4. When the Charter was granted learning and science were more successfully cultivated abroad, and especially in Italy, than in this kingdom. It was therefore the practice at the time to resort to foreign universities for the purpose of acquiring a higher education than England could then offer, and degrees in physic were often taken in Italy. But it was also the usage for those who possessed foreign degrees in physic, to be incorporated either at Oxford or Cambridge.

5. Lord Mansfield in *Rex v. Askew*. "A man is not capable of being admitted into the College without being possessed of certain qualifications which are made requisite. But granting that he is really possessed of these requisite qualifications, yet his merely being qualified for becoming a member does not make him one. The instrument which gives the licence does not mention any such thing as an admission to be a member of the College. The word 'admissus' is only used in this instrument as a more classical term than permissus. It does not import an actual admission into the College. The Charter, and the Act of Parliament confirming it, make a distinction between the college or corporation and *other men of the same faculty*, 'to govern the said fellowship and commonalty and all men of the same faculty: and again, Collegium sive Communitatem prædict' *et omnes homines ejusdem facultatis*.' A good deal has been said about usage; but usage only applies when the construction is doubtful. Here the construction is not doubtful."

6. Your petitioners are prepared to show that bye-laws have been framed, and long acted upon by the College, which are directly opposed to, and in violation of the letter and meaning of the said Charter.

7. That the Physicians practising in London are invidiously divided by the bye-laws of the College into two orders; one is denominated Fellows; the other, constituting by far the majority, is designated (and by implication degraded) by the term Licentiates.

8. That the Fellows have usurped all the corporate power, offices, privileges, and emoluments attached to the College; that the Licentiates do not participate in these benefits, but are illegally excluded from all the offices, and any share in the management of the Corporation; and so far is this principle of exclusion carried, that the Licentiates are not even admitted to the library or museum of the College.

6. The existing bye-laws have been decided to be legal, and consequently not directly opposed to the Charter, by Lord Chief Justice Kenyon, and by four other Judges of the Court of King's Bench, after solemn hearing in *Stanger v. the President and College of Physicians*.

7. This is a distinction which has existed from the foundation of the College, and the judgement of Lord Mansfield in *Rex v. Askew* is quite decisive in favour of its legality. The word *fellowship* is found in the Act of Parliament confirming the Charter, and Lord Mansfield's decision shows that the Physicians of London were divided into two bodies, the Fellows who granted the licence, and the Licentiates who received it. There can be no just cause of complaint in a term which belongs to the English and to most of the foreign Universities.

8. This corporate power has been fully decided by all the Judges of the Court of King's Bench to be legally exercised in *Stanger v. the President and College of Physicians*. It is therefore no usurpation. The mode of electing the highest officers of the College is determined by the Charter itself; and the bye-laws by which the choice of the other officers is determined, have been pronounced to be good and reasonable by the same high authorities. They cannot therefore be illegal. These offices of the College are offices of labour and not of profit.

The annual payments to the College Officers are:—

To the President, under the will of Dr Hamey	£ 25
To each of the four Censors £20	. 80
To the Treasurer	. 20
To the Registrar	. 40
To each of the two Junior Lecturers £10	. 20
To a third Lecturer	. 20
To the Senior Lecturer	. 32

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So that the sum total if divided by eleven, (the number of necessary officers of the College,) would give £21. 10s. 10 $\frac{3}{4}$ d. as the emolument of each.

The Library of the College could not be opened to the Licentiates without incurring expences which the College possesses no funds to defray, but any Licentiate can at any time obtain any books from the library through the medium of a Fellow. The Museum was founded by Dr. Baillie, and remains under the regulations made and for several years superintended by the founder himself.

9. That there exists no foundation in the Charter, or in the Acts confirming it, for such distinction of orders and consequent exclusion from all privileges.

10. That according to one of the bye-laws, no physician can claim admission as a Fellow, unless he has graduated or been admitted *ad eundem* at the Universities of Oxford or Cambridge, where medicine is imperfectly taught; while Physicians who have graduated at other British or Foreign Universities, celebrated as schools of medicine, are unjustly excluded from the fellowship by this obnoxious bye-law.

9. The reverse of this allegation is proved to be true by the solemn judgments of Lord Mansfield, of Lord Kenyon, of Mr. Justice Ashhurst, of Mr. Justice Grose, and of Mr. Justice Lawrence, *in the case of Stanger v. the President and College of Physicians*.

10. No Physician practices in London but by virtue of a licence granted after he has proved his competency by examination. The Fellow only practises physic in London by virtue of the licence. The Candidate only practises in London by the same authority. The Licentiate by virtue of his licence has equally this privilege. But the College admits no claim to the fellowship from any university. It has given a preference to graduates of Oxford and Cambridge, because the highest education which the present state of society recognizes in this country is to be there obtained. The college never contemplates the acquisition of medical knowledge at Oxford or Cambridge, but the best preliminary education which this or any other country affords. It has a full conviction that the moral and mental discipline of an English university, lays the best foundation for professional excellence; and as the doctor's degree is only conferred at the expiration of 10 years, the residence required by the statutes of the Universities leaves ample time for the pursuit of the highest medical attainments wherever they are most effectually taught, and after the mind has been best prepared to receive them. The Fellows of the College have been of opinion that this connection with the Universities has materially contributed to raise and maintain in high estimation the character of Physicians and of the whole profession in this country; to this opinion they adhere, and they are guided by it. But the Licentiates are subjected to no practical disadvantage from their position in the College List. They are excluded from no offices of emolument which the government of the country can confer. At this moment half of the King's Physicians in Ordinary are Licentiates. The Physicians at the head of the Army and Navy Medical Boards are or have been Licentiates. The Physicians of Greenwich Hospital are Licentiates. The Physician of Chelsea Hospital is a Licentiate.

11. That the College was admonished from the Bench by the Lord Chief Justice Mansfield, to amend their bye-laws in reference to the admission of Licentiates into the fellowship; that influenced by this censure, the College formed other bye-laws, deceptive in their character, which, whenever they have been acted upon, have tended still further to depress and injure the order of Licentiates.

12. That the College demand and receive a large sum of money from the Fellows and Licentiates, for the supposed privilege of practising as Physicians within a circuit of seven miles round London, and that they do not, and cannot protect them in this privilege.

11. The bye-laws of the College to which Lord Mansfield spoke, were absolutely exclusive: for on the 12th of February, 1674, a letter was addressed to the College of Physicians by the King, directing that no Physician should be admitted to the Fellowship, unless he had received his education at Oxford or at Cambridge, or had been there incorporated. The College had obeyed the mandate of their Sovereign, but after the judgment of Lord Mansfield, the bye-laws of the College were, according to his Lordship's advice, reviewed by the first counsel in the kingdom, and modified as they now exist. Their legality and propriety have been recognised and asserted by every judge of the Court of King's Bench in *Stanger v. The President and College of Physicians*, and under one of these bye-laws which gives to the President the privilege of proposing annually one Licentiate to be elected to the Fellowship, several most eminent Physicians have been admitted into the College. This could not tend to depress and injure the order of Licentiates.

	£	s.	d.
12. The payment for the licence is, . . .	56	17	0
From which is paid for Stamp	15	0	0
President's fee, for examination and admission	2	0	0
Four Censors' fees, for three examinations	4	0	0
Registrar for minutes of all examinations	1	0	0
Treasurer	0	15	0
Beadle	1	5	0
Porter	0	5	0
	24	5	0
	32	12	0

leaving the sum of 32*l.* 12*s.* to be added to the College funds.

Lord Mansfield in *Rex v. Askew*. The "taking money of the Licentiates has been urged as an argument on their side; but taking their money does not prove them to be Members of the College. If wrongfully taken from them, they may recover it." The privilege which the licence confers, is proved to be real and not imaginary, by the concurrent testimony of every successful Licentiate. With regard to protection, powers have been granted, since the Charter existed, to two other corporate bodies, whereby the protecting power of the College has been incidentally impaired, because persons prosecuted by the College for illegally practising, have escaped punishment, by pleading that they practised under some other authority; but it can hardly be charged upon the College as a crime, that it has not exercised powers which it never possessed.

13. That the Graduates of Oxford and Cambridge are obliged to be Members of the Established Church of England, and consequently all Dissenters are excluded from claiming the Fellowship; this your Petitioners consider a grievous injustice, and an act of intolerance unbecoming the present age.

14. That these invidious bye-laws, made in the spirit of corporate monopoly, have involved the College in continued litigation, and created a jealousy between the Fellows and Licentiates, discreditable to the members of a liberal profession.

13. No man can claim the right of being admitted a Fellow. And no man is excluded from the Fellowship, because he is a Dissenter. Neither Fellows nor Licentiates are ever required on their admission, to subscribe to any religious creed, or asked any questions concerning their religious opinions. The Graduates of Oxford and Cambridge are obliged to be Members of the Established Church by the Laws of the English Universities, but under the existing bye-laws, several Physicians have been elected Fellows, who conscientiously dissent from the Established Church, and an avenue to the fellowship of the College is open through the order of Licentiates to persons of every religious sect.

14. Does this mean monopoly of the Fellowship, or monopoly of the business of the profession? If the monopoly of the Fellowship is meant by these words, it is admitted that a preference is given to the Degrees of the English Universities, but there is no exclusion of persons who are Graduates of other Universities. If monopoly of official emoluments be meant, there are none to enjoy. The College of Physicians is probably the poorest corporation in His Majesty's dominions. If the monopoly of practice in London is meant, the extensive practice of a large number of Licentiates is a sufficient answer. The College has with little, or with only temporary success endeavoured from time to time to discover some mode of conciliation, consistent with its paramount duty of urging upon Physicians the advantages, and the necessity of an education of the highest class. In so large a body as the Physicians of London, some Fellows and some Licentiates, must be expected to fail of attaining any professional eminence. Those of the latter class who have not succeeded, may be apt to attribute their failure to their not being Fellows of the College: but it may be worth their while to consider that many of the Fellows have met with as little success, and that the monopoly of failure does not belong to the Licentiates.

15. That your petitioners with deference submit, that the College of Physicians as at present constituted, is wholly inadequate to the due regulation of the medical profession in this country, and the protection of the public; and further, that the Charter of the College in no way provides for the practice of Physicians in the several counties of England and Wales.

15. The accusation in this case is the want of protection afforded to the public by the College against illegal practitioners. But the public do not complain. There are two powers granted by the Act of Parliament that confirmed the Charter. One empowering the College to examine all persons practising as Physicians in London or within seven miles of the same, the other empowering the President and three of the Elects of the College to license all persons practising as Physicians beyond this district, except those who have received the licence of either of the English Universities. The offence of practising without a licence in London or within seven miles thereof is punishable by action at law at the instance of the College. The offence of practising as a Physician without a licence beyond this district, is a misdemeanor and punishable by common information.

Mr. [unclear]
Glasgow 26
[unclear] 2
[unclear] 7
[unclear] 10
London 11



